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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,603	11/07/2000	Thilo Gabler	41023/FLC/W391	9655

23363 7590 04/26/2004

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EXAMINER

LAstra, DANIEL

ART UNIT PAPER NUMBER

3622

DATE MAILED: 04/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/707,603

Applicant(s)

GABLER, THILO

Examiner

DANIEL LASTRA

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9-14 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9-14 and 16-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 3-7, 9-14 and 16-25 have been examined. Application 09/707,603 **(METHOD AND APPARATUS FOR INCENTIVE BASED ADVERTISING)** has a filing **11/07/2000**.

Response to Amendment

2. Applicant amended claims 1, 6, 7, 13, 14, 20 and cancel claims 2, 8, 15. Applicant amendment overcame the §101 rejection. Applicant's arguments, filed 01/05/04 with respect to the rejection(s) of claim(s) 1-25 under Reiter have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of De Rafael et al (U.S. 6,529,878).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al (U.S. 5,835,087) in view of De Rafael et al (U.S. 6,529,878).

As per claim 1, Herz et al teach:

A method for incentive advertising, comprising:

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receiving a viewer profile *by an advertiser server from a viewer browser via a communication link*, the viewer profile including a viewer identification (see column 5, line 35 – column 7, line 10; column 31, line 23 – column 33, line 60);

selecting advertising content based on the viewer profile *by the advertising server* (see column 40, lines 5-60; column 46, lines 5-28);

sending the advertisement content *by the advertising server to a viewer browser via the communication link* for display to a viewer *by the viewer browser* (see column 45, line 47 – column 46, line 28); and

Herz fails to teach recording the viewer identification *by the advertising server* for awarding an *entry into a game of chance to the viewer as an* advertising incentive. However, De Rafael teaches a system for rewarding persons with sweepstakes entries for viewing advertisement and a system for gathering statistical or demographic information about persons who view an advertisement (see column 3, lines 4-27). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Herz would record the viewer identification and would award sweepstakes entries as an incentive to view the advertisement, as taught by De Rafael. Awarding advertising incentive would increase the probability that the advertisement would be considered, or given attention, by the intended target.

As per claim 3, Herz et al teach:

The method of Claim 1, wherein:

the viewer profile further includes advertising content viewing preferences of the viewer (see column 5, line 20 – column 7, line 10); and

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selecting the advertising content is based on the advertising content viewing preferences of the viewer (see column 11, lines 1-35; column 31, line 35 – column 33, line 60; column 40, line 5-60).

As per claim 4, Herz et al teach:

The method of Claim 1, wherein:

the viewer profile further includes a physical location of the viewer (see column 11, lines 11-35); and

selecting the advertising content is based on the physical location of the viewer (see column 11, lines 11-35; column 5, line 35 – column 7, line 10).

As per claim 5, Herz et al teach:

The method of Claim 1, wherein:

the viewer profile further includes a language preference (see column 10, line 57 – column 11, line 34); and

selecting the advertising content is based on the language preference of the viewer (see column 5, line 35 – column 7, line 10).

As per claim 6, Herz et al teach:

The method of Claim 1, the method further comprising:

receiving *by the advertiser server* a desired viewer profile from an advertiser (see column 5, line 35 – column 9, line 60; column 31, line 24 – column 33, line 60; column 45, line 47 – column 47, line 5);

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linking *by the advertiser server* the desired viewer profile to a particular advertising content (see column 5, line 35 – column 9, line 60; column 31, line 24 – column 33, line 60; column 45, line 47 – column 47, line 5); and

selecting *by the advertiser server* the particular advertising content to send to the viewer upon matching the viewer profile to the desired viewer profile (see column 5, line 35 – column 9, line 60; column 31, line 24 – column 33, line 60; column 45, line 47 – column 47, line 5).

Claims 7 and 9-12 contain the same limitations as claims 1 and 3-6 therefore the same rejection is applied.

Claim 13 contains the same limitations as claims 1-6 therefore the same rejection is applied.

Claims 14 and 16-19 contain the same limitations as claims 1 and 3-6 therefore the same rejection is applied.

Claim 20 contains the same limitations as claims 1-6 therefore the same rejection is applied.

As per claim 21, Herz et al teach:

The method of claim 1, wherein selecting advertising content further includes selecting advertising content based on a premium paid by an advertiser (see column 40, lines 5-60).

Claim 22 contains the same limitations as claims 1 and 21 therefore the same rejection is applied.

Claim 23 contains the same limitations as claims 1-6 and 21 therefore the same rejection is applied.

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Claim 24 contains the same limitations as claims 1 and 21 therefore the same rejection is applied.

Claim 25 contains the same limitations as claims 1-6 and 21 therefore the same rejection is applied.

Response to Arguments

4. Applicant's arguments, filed 01/05/04 with respect to the rejection(s) of claim(s) 1-25 under Reiter have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of De Rafael et al (U.S. 6,529,878).

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

DL

Daniel Lastra

April 7, 2004


MELANIE A. KESTNER
PATENT EXAMINER